

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI EX REL.
JIM SWOBODA**

RESPONDENT,

**v.
MISSOURI COMMISSION ON
HUMAN RIGHTS,**

APPELLANT,

ALISA WARREN,

APPELLANT,

and

ARMSTRONG TEASDALE, LLP

APPELLANT.

DOCKET NUMBER WD83556 Consolidated with WD83571

DATE: January 12, 2021

Appeal From:

Jackson County Circuit Court
The Honorable Bryan Round, Judge

Appellate Judges:

Division Three: Edward R. Ardini, Jr., Presiding Judge, Alok Ahuja, Judge and Gary D. Witt,
Judge

Attorneys:

Kirk D. Holman, Kansas City, MO, for respondent Jim Swoboda

Paul L. Brusati, St. Louis, MO, for appellant Armstrong Teasdale, LLP.

Andrea Mazza Follett and Sara G. Rittman, Jefferson City, MO, for appellants Missouri
Commission on Human Rights and Alisa Warren.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI EX REL. JIM SWOBODA, RESPONDENT,

v.

MISSOURI COMMISSION ON HUMAN RIGHTS, APPELLANT,

ALISA WARREN, APPELLANT,

and

ARMSTRONG TEASDALE, LLP, APPELLANT.

WD83556 (Consolidated with WD83571)

Jackson County

Before Division Three Judges: Edward R. Ardini, Jr., Presiding Judge, Alok Ahuja, Judge, and Gary D. Witt, Judge

The Missouri Commission on Human Rights; Alisa Warren, Executive Director of the Commission, in her official capacity (collectively, "the Commission"), and the Armstrong Teasdale L.L.P. law firm ("Armstrong") appeal the judgment of the Circuit Court of Jackson County, Missouri ("Circuit Court"), granting a writ of mandamus in favor of Jim Swoboda ("Swoboda") directing the Commission to rescind its decision to dismiss Swoboda's charge against Armstrong under the Missouri Human Rights Act ("MHRA"), to accept Swoboda's charge, and to conduct an investigation thereof.

Swoboda was an employee of the Kansas City Board of Police Commissioners ("BOPC") and testified on behalf of another employee in a charge of discrimination against the BOPC. Armstrong provided legal representation to the BOPC on that case. Swoboda alleged that Armstrong lawyers warned him to think about his career when he testified. Swoboda alleged that following his testimony that the BOPC retaliated against him for assisting the other employee in his case under the MHRA and that Armstrong aided and abetted that retaliation. The Commission granted Swoboda a right to sue letter as to the BOPC, but dismissed his charge against Armstrong. The BOPC is not a party to this appeal.

On appeal, the Commission claims the Circuit Court erred in denying its motion to dismiss the writ petition because: 1) Swoboda did not allege facts establishing that Armstrong aided and abetted acts of retaliation against Swoboda; 2) denying its motion to dismiss because Swoboda did not allege a clear, unconditional right to relief but sought to overturn a discretionary decision; 3) the judgment was premature in that the Commission had not filed its answer to the writ petition and the Circuit Court did not hear evidence; and 4) Swoboda did not have an employer-employee relationship with Armstrong.

Armstrong filed a separate brief, claiming that the Circuit Court erred in entering a writ of mandamus because: 1) the Commission's acts were discretionary, not ministerial, and therefore were not appropriate for a writ; 2) Swoboda was seeking to establish a new right under the MHRA, not to enforce an existing right; and 3) Swoboda and Armstrong never had an employer-employee relationship.

Affirmed in part, reversed in part and remanded with directions.

Division Three holds:

We affirm the portion of the Judgment directing the Commission to vacate the dismissal of Swoboda's administrative charge against Armstrong, however, because more than 120 days have passed since Swoboda filed his charge, we reverse the portion of the Judgment requiring the Commission to investigate and direct the Commission to issue Swoboda a letter granting him the right to sue Armstrong pursuant to the MHRA.

(1) The Circuit Court's writ of mandamus was not improperly granted prematurely. Although neither the Commission nor Armstrong filed a pleading headed "answer" with the court, Rule 94.07 requires that an answer be filed in response to the petition in mandamus, which "may include or be accompanied by one or more motions." While Rule 55.25 provides that the filing of the motion to dismiss extends the time for filing an answer, Rule 94.07 is specifically directed at actions in Mandamus and is controlling. The Commission's and Armstrong's motions to dismiss set forth all of their objections to Swoboda's writ petition and thus constituted answers to the writ petition under Rule 94.07. The Commission and Armstrong also fail to state how they were prejudiced by not filing additional pleadings headed "answer" or what allegations they could have raised in the answer which were not included in their motions to dismiss.

(2) The Commission's act of dismissing Swoboda's complaint against Armstrong on the basis that Armstrong was not Swoboda's employer was not a discretionary determination but rather it was a determination of a purely legal question, which both the Commission and the Circuit Court decided on the pleadings without taking evidence. Accordingly, it was an issue appropriate for a writ of mandamus.

(3) Because it has always been unlawful for an employer as defined under the MHRA "to aid, abet, incite, compel, or coerce the commission of acts prohibited under [the MHRA]," because it has always been unlawful to retaliate or otherwise discriminate against any other person because the person has assisted or testified in any investigation or proceeding under the MHRA, and because the Commission has always had a duty to "promptly investigate [a] complaint" filed pursuant to the MHRA and issue a right to sue letter if requested when the Commission has not completed its administrative process within 180 days, Swoboda's writ petition did not seek to enforce a "new" right but rather

alleged a clear unconditional right to relief of the Circuit Court ordering the Commission to perform an act required by law.

(4) Although Armstrong was never Swoboda's employer, a direct employer-employee relationship between the victim of retaliation under section 213.070, RSMo, and "an employer" as defined by the MHRA who aids or abets the employee's employer in the retaliation is not required by the plain language and the broad remedial intent of the MHRA.

(5) The appellants argue that the circuit court's judgment was in error because Swoboda did not establish that Armstrong's attorneys alleged threats to Swoboda regarding his testimony in a fellow employee's discrimination proceeding were directly related to Swoboda's employer's alleged retaliatory actions against him. This argument goes to the merits of Swoboda's claim, which neither the Commission nor the Circuit Court ever reached, and cannot form a basis for reversal.

Opinion by: Gary D. Witt, Judge

January 12, 2021

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